IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 34 of 96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?No

KALIDAS AMBALAL NAYAK

..Petitioner

Versus

SAVITABEN D/O DAHYABHAI CHHOTALAL

..Respondent

Appearance:

MR RC JANI for Petitioner

MR VS SHAH for Respondent No.

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 22/02/96

ORAL JUDGEMENT

Rule. Learned Counsel Mr. V.S. Shah for the respondent waives the service of the Rule.

The present Civil Revision Application demonstrates a gross case of procedural irregularity committed by the Appellate Bench of the Small Causes Court, at Ahmedabad.

The plaintiff-landlady, Smt. Savitaben had instituted H.R.P.Suit No. 3326 of 1982, against the defendant-tenant,Kalidas Nayak, before the Small Causes Court, Ahmedabad. The suit was for a decree of eviction, inter alia, on the ground that the defendant-tenant has acquired the possession of a suitable residential accommodation. The alleged accommodation was, admittedly, at Sahajanandnagar Society, at village Nikol, Ahmedabad District. The case of the plaintiff-landlady came to be challenged by the defendant-tenant, by filing the written statement, at Exh.16. Along with many other disputes, it was contended that, the defendant-tenant has a shop and earns a meagre amount and that, it would not be possible for him to meet with the expenses, if he goes to stay at village Nikol. On the appreciation of the evidence on record, the learned Trial Judge was pleased to come to the conclusion that, the plaintiff-landlady was not able to establish her case against the defendant-tenant for a decree of eviction, on the ground that, he has acquired possession of a suitable residential accommodation. The suit of the plaintiff-landlady, therefore, for a decree eviction, came to be dismissed with no order as to costs, vide judgment dated 30th October 1985. The above said judgment and the consequent decree were taken in appeal before the Appellate Bench of the Small Causes Court, at Ahmedabad, by filing Civil Appeal No. 229 of 1985.

The said appeal came up for hearing before the Appellate Bench (Coram: A.S.Sanghvi, Chief Judge & P.V.Mevada, Judge). It appears that, serious procedural lapses started to take place when the appeal was resting before the Appellate Bench. On a perusal of the original records along with the Rojkam, it appears very clearly that, on September 8, 1995, the application for the amendment of the pleadings, at Exh.14 was submitted. A reference to this application at Exh.14 demonstrates beyond any manner of doubt that, the said is an application for the amendment of the pleadings. The plaintiff-landlady, under the amendment, wanted to urge that, the defendant-tenant has acquired suitable residential accommodation, at Hina Apartment, situated at Memnagar and that, the sale deed, in this respect, has been executed, on August 17, 1992. Thus, it appears that, the plaintiff-landlady, who had failed before the Trial Court to establish a case regarding the acquisition of suitable residential accommodation at Sahajanandnagar Society, Nikol,

wanted to bring in a new case regarding the acquisition of suitable residential accommodation at Hina Apartment, Memnagar. This application came to be presented on September 14, 1995. This application was kept for orders. It is, therefore, clear that this application for amendment of the pleadings had remained undecided.

Probably, this could happen because, later on, there was a purshis filed by the learned Counsel for the plaintiff-landlady, on September 15, 1995 saying that, "the amendment application should be treated as a part of the appeal".

It appears that, thereafter, the additional evidence was allowed to be adduced, under which, the son of the plaintiff-landlady had tendered oral evidence and had also proved certain documents, which were produced at the Appellate stage.

It appears that, the Appellate Bench was, probably, under the impression that, the original suit was also based on the factum of acquisition of premises at Sahajanandnagar Society, Nikol and that, now when the amendment sought is in respect of the acquisition of some premises at Hina Apartment, Memnagar, the question was very much before the Court and, therefore, the appeal could proceed ahead.

This impression gathered by the Appellate Bench is, clearly, erroneous and is in violation of the principles regarding the amendment of the pleadings. Under the purshis dated September 15, 1995, it could not have been said that, "the amendment application should be treated as a part of the appeal". Some orders were required to be passed upon the amendment application and if the proposed amendment were to be allowed, the other side was required to be given an opportunity to file the additional written statement against the amended plaint. If that was done, the defendant-tenant could have an opportunity of meeting with a case which was sought to be inserted at the appellate level. This has not been done. It is unfortunate that, the learned Appellate Bench could not appreciate the distinction between an acquisition of suitable residential accommodation at Sahajanandnagar Society, Nikol which was not accepted by the Court below and the acquisition of some other premises at Hina Apartment, at Memnagar. It is, equally, unfortunate that, the learned Appellate Bench could not perceive the necessity of passing appropriate orders beneath the application for the amendment. It is, equally, erroneous and unfortunate on the part of the learned Appellate Bench that, a purshis came to be recorded saying that, "the amendment application should be treated as a part of the appeal".

All this demonstrates a serious procedural lapse on the part of the learned Appellate Bench, which has vitiated the hearing of the appeal and the consequent finding. The only course open to me is to set aside the judgment and the decree rendered by the learned Appellate Bench and to remand the matter to the said Court, for proceeding ahead with the stage at which it had stopped to function, in a legal manner. In other words, the Court should proceed ahead from the stage of the decision of the amendment application at Exh.14. Needless it is to notify to the attention of the learned Appellate Bench, Small Causes Court, Ahmedabad to various provisions relating to the procedure regarding the amendment of the pleadings. It is hoped and trusted that, all the necessary formalities shall be performed and the application at Exh.14 shall be decided according to law and on merits. The other steps which should follow in case of the amendments of the pleadings shall have to be done and thereafter only, the appeal could be heard.

With this, the present Revision Application is allowed and the judgment and the decree under challenge, are hereby set aside. Rule is made absolute.

The matter is remanded to the Court below, with the above said observations, with a request to decide and dispose of the appeal, as early as possible, after completing the above said formalities and, at any rate, within a period of five months from the date of receipt of the present orders. No costs.

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